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No. 619

In the Supreme Court of the United States

OCTOBER TERM, 1941

WALTER G. QUERY, JOHN P. DERHAM AND JOHN G. RICHARDS, AS MEMBERS OF AND CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION, PETITIONERS

v.

UNITED STATES OF AMERICA, MAJOR GENERAL HENRY D. RUSSELL, UNITED STATES ARMY, INDIVIDUALLY AND AS COMMANDING GENERAL, FORT JACKSON, SOUTH CAROLINA, AND MAJOR WILLIAM R. TOMEY, UNITED STATES ARMY, INDIVIDUALLY AND AS POST EXCHANGE OFFICER, FORT JACKSON, SOUTH CAROLINA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

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Although the respondents believe the decision below to be correct, they do not oppose the granting of a writ of certiorari in this case.

The court below held that a United States Army Post Exchange is an instrumentality of the

United States and, therefore, expressly excepted from the permission granted to the states by the Act of October 9, 1940, 54 Stat. 1059, to levy certain taxes on federal areas. Accordingly, the tax imposed by Act No. 574 of the General Assembly of the State of South Carolina was held inapplicable to the activities of the United States Army Post Exchange at Fort Jackson, South Carolina.

A conclusion similar to that reached by the court below was reached by the District Court of the United States for the Eastern District of Kentucky in *Falls City Brewing Co.* v. *Reeves*, 40 F. Supp. 35. The decision of the Circuit Court of Appeals for the Fifth Circuit in *Pan American Petroleum Corp.* v. *State of Alabama*, 67 F. (2d) 590, certiorari denied, 291 U. S. 670, may be distinguished but at least in principle is in conflict with the decision below.

These decisions present a question of importance which has arisen in a number of states[1] and an authoritative determination of the issue is desirable.

Respectfully submitted.

CHARLES FAHY,
Acting Solicitor General.

OCTOBER 1941.

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[1] Alabama, California, Florida, Michigan, New Jersey, North Carolina, Pennsylvania, Tennessee, Texas, and Virginia.

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